THE EARLY SLAVE LAWS OF MISSISSIPPI.

BEING SOME BRIEF OBSERVATIONS THEREON, IN A PAPER READ BEFORE THE MISSISSIPPI HISTORICAL SOCIETY, AT A MEETING HELD IN THE CITY OF NATCHEZ, APRIL 20TH-21ST, 1899.

BY
ALFRED H. STONE, ESQ.,
GREENVILLE, MISS.

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BEING SOME BRIEF OBSERVATIONS THEREON, IN A PAPER READ BEFORE THE MISSISSIPPI HISTORICAL SOCIETY, AT A MEETING HELD IN THE CITY OF NATCHEZ, APRIL 20TH–21ST, 1899.

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Probably no institution with which history deals has been the centre of more momentous events, or the subject of more earnest and acrimonious discussion than that of human slavery. To the study of whatever of the states of civilization we may devote ourselves, we find that, regardless of its present position of advancement, at some period of its history the personal ownership of human beings was a recognized feature of its social fabric. Nor is it true that the existence of this institution at any certain period of a people's history can be taken as an evidence of a low state of intellectual, moral or social development during such period. Quite the contrary was often the case,—despite the fact that we have heard so much of "the demoralizing and degrading effects of slavery" and are told that it was ever a curse upon any people who tolerated it,—for both biblical and secular history are replete with testimony to the magnificent achievements of nations whose most glorious epochs were those during which slavery flourished.

It is foreign, however, to our purpose to engage in a discussion of slavery as a civil institution, or to question whether its toleration was of good or evil effect, or yet to inquire whether it could ever have justifiably existed. We propose to look at but one of its many features,—and that merely from the standpoint of an investigator of what has already passed into the realm of ancient history,—become something "flat, stale and unprofitable" to all save the curiously inclined.

The bitter and often unreasoning hatred, on the part of many, of the institution and those who upheld it in this

country, and the repugnance with which it came to be generally regarded by even sincere and generously inclined people in a section in which it was non-existent, were unquestionably largely induced by the constant contemplation from a distance of an institution the softer aspects of which could not be understood by strangers to its inner life,—but of which the one dominant feature was the bare fact of the bodily ownership of human beings,—the mere existence of the legal right to barter, sell and trade in human-kind. Of the relations between the master and his human chattels, and of the laws governing those relations, except in rare instances, they seemed to be ignorant,—as well, apparently, as of the safeguards with which a humane public sentiment surrounded the treatment of the slave, both by the law and the master.

It is a brief consideration of some of these laws, as they stood upon the statute books of our own state during the earlier years of its history, that we beg to invite your attention.

Under an old Federal ordinance, passed in 1787, for the government of the Northwest Territory, it was provided that in that territory there should be "neither slavery nor involuntary servitude",—except of course for the punishment of crime. As the Congressional act of 1798, forming the Mississippi Territory, subjected it to the provisions of this ordinance, we note the somewhat curious fact that in Mississippi, in its incipient territorial organization, slavery was a prohibited institution. However, in the act of 1802, which for the first time provided for the establishment of a government in the Mississippi Territory, this provision alone of that ordinance was excepted, and slavery recog-ognized as legal.

The first provision concerning slavery which we find in our books, after Mississippi became a state, is contained in a clause in our first constitution, adopted in the town of Washington, August 15th, 1817, which provided that the Legislature might establish in each county a Court of Pro-

bate, for the discharge of various enumerated functions "and for the trial of slaves". This very first provision touching them seems to look to establishing proper legal means for their control, and in itself bears testimony to the falsity of the notion, which at that time some pretended to entertain, that the whim of the master was the sole law for the governing of the slave, and that the latter had no legal status whatever.

A little further along in the same instrument we find the Legislature delegated with authority to pass laws prohibitive of the introduction into the State of slaves "as merchandise". This apparently evidences the existence, even at that early date, of a spirit of opposition to the business of "slave trading" as a common vocation which easily accounts for the feeling with which the "nigger trader" was regarded by the better classes,—those among whom he would look for purchasers of his goods. In this same clause the Legislature is empowered to pass laws to oblige the owner of slaves "to treat them with humanity", to provide for them necessary clothing and provisions, to abstain from all injuries to them extending to life or limb," and, in case of the failure to comply with the directions of such laws, the slave might be sold to some more humane master. By this instrument it was also expressly provided that the Legislature should never have the power to deprive the slave of the right to an impartial trial by a jury.

I think it proper that we should call to mind these provisions of our first organic law,—testifying as they do to the treatment which law and society exacted of the master toward his slave;—but. while we can not fail to be impressed with the spirit of justice and humanity manifested in our early constitution, at a casual reading, some of the succeeding legislative enactments might be regarded as extremely harsh.

But in considering laws of this nature, abhorrent as they may be to our present sense of humane propriety, we must not lose sight of the time in which they were effective, and

our judgment must be tempered by a remembrance of the fact that they were operative in a state of society which, while no less refined, or lower in its moral tone than our own, yet looked upon criminal laws from a viewpoint radically different from that of to-day.

The debtor's prison still existed in England,—the stocks and pillory were instruments of common use both here and there,—the public whipping post claimed its daily victims,—the rack and thumb-screw were still applied to refractory witnesses in some of the courts of the old world and there was not yet in all Christendom a country in which women had equal property rights with men,—which, by the way, Mississippi was the first community in the civilized world to confer, and she had not progressed thus far by some twenty odd years.

For all of the many petty offenses of which the slave might be guilty the punishment was confined to "stripes",—few or many in the discretion of the justice of the peace, though for every offense the maximum number was fixed by law. Nor could they be applied but by authority of the magistrate, after due examination, though there was almost invariably coupled with the designating of the number of stripes the injunction that they be "well laid on". The mode of procedure in all cases wherein the offense was punishable with stripes was for the justice to summon "two respectable slave-holders to assist him",—the evidence for and against the accused being laid before them, the three determined his guilt and fixed the punishment,—within the limits of the law.

The extent of this punishment varied all the way from ten stripes for "presuming to come upon the plantation of any person without leave from his master", up to thirty-nine for grand and petty larceny, between the punishment for which there was no difference, and for "buying or selling without a written permission from his master". This latter seems to have been regarded as quite an offense, as we have frequent references to it,—the punishment fixed being as great as that attached to misdemeanors which we would con-

sider much graver. It merely consisted in the slave buying or selling anything whatever without his master's written permission,—such permission being necessary before he could lawfully carry on even the smallest of commercial exchanges.

Even in our present state of boasted enlightenment it is questioned by many thinkers and crimnologists whether we have been wise in anywhere substituting the jail for the whipping post for minor offenses. At all events, as a deterrent to petty crime among our colored brethren one sound thrashing, "well laid on", would most likely prove more efficacious than any jail sentence imposed by a latter day justice of the peace.

It was unlawful for a slave to leave his master's premises without permission, and an offense for a negro, bond or free, to have in his possession any weapons of any kind. The penalty for engaging in any "riots, routs or unlawful assemblages" was the maximum thirty-nine lashes, and the same act provided that if any white person should be convicted in the Circuit Court of "being in company with slaves or free negroes at any unlawful meeting" he should be fined twenty dollars, to go to the informer, and, moreover, receive not exceeding twenty lashes on his bare back, at the discretion of the court".

It was in defining such unlawful meetings or assemblages to include "all assemblies of slaves, or free negroes or mulattoes, mixing and associating with such slaves, above the number of five, at any place of public resort, or at a meeting house, in the night, or at any school, for teaching them reading or writing, either in the day or night, under whatsoever pretext" that our slave holding law makers sinned so grievously in the eyes of the abolitionist. While it may be observed that this particular act contained nothing to legally prevent a master from teaching his slave to read and write, yet the policy of the law at that time is of course well known to us all to have been opposed to any such education.

I shall not engage in any discussion of the question of

negro education nor seek to air my personal views in regard to it, but merely venture the statement that the experience of a third of a century, involving the expenditure of millions of dollars by the white race upon it,—the moral, social and intellectual condition of the negro to-day calmly and fairly considered,—have not demonstrated the unwisdom of the slave holders position of seventy six years ago, nor yet proven an adherance to opposite views to be for the best interests of either race.

In this connection it was provided that nothing contained in any of these enactments should be so construed as to prevent a master from allowing his slave to go to places of religious worship, sagely demanding, however, "that such worship be conducted by a regularly ordained or licensed white minister, or attended by at least two discreet and reputable white persons, appointed by some regular church or religious society",—it not being lawful for a negro to exercise any of the functions of a minister of the Gospel,—though a master might allow his slave to preach to his own slaves, but to none others.

It was unlawful for a white man to do any trading whatsoever with a slave on the Sabbath, without the consent of the master in writing first being had by the slave, and with a free negro it was unlawful on that day under any circumstances,—our early fathers seemingly being at all times possessed of a very high regard for the general efficacy and saving grace of a written permission from a master.

The right of a slave to act in defense of himself when assaulted by a white person was at all times recognized by the law, and while it was an offense punishable by thirty-nine lashes for a slave to "use abusive or provoking language to, or to lift his hand in opposition to a white person" yet no punishment was to be inflicted where it appeared to the justice that he was acting in self defense.

It was not lawful for a slave to possess horses, mules, sheep, cattle, hogs or dogs, nor could he cultivate any cotton for his own use,—the only penalty attached, however,

being the forfeiture of the property,—except as to dogs, for the keeping of which he might be punished with not exceeding twenty-five stripes. Cruel or unusual punishment, for various plantation or house-hold offenses, could not be inflicted on a slave by his master,—under penalty of a fine of five hundred dollars for each offense, the fine to go to the state treasury, for the benefit of the "literary fund".

The various misdemeanors enumerated here constituted the bulk of the crimes of which it was thought probable the slave would be guilty,—there being but few others contemplated in our early criminal legislation.

For such others, however, much graver penalties were provided.

For an assult with intent to kill, by a slave upon a white person, where express malice was clearly proven, the punishment was death. If, however, only implied malice were shown, the slave was to receive any number of lashes,—not exceeding one hundred on each day, for three days in succession. For all such offenses, it must be borne in mind, the law guaranteed to the slave the right to a fair and impartial trial by a jury. The sheriff was required to summon "twenty-four good and lawful men of the vicinage," of whom at least twelve should be slave holders in their own right, from which number a jury of twelve was selected and duly sworn for the trial of the case. On such juries neither the master of the offending slave nor any person related to him, nor any one related to the prosecutor could sit. No previous indictment was essential, but in all other respects the trial was conducted just as in the case of a white person. It was obligatory upon the part of the court, where the owner failed to provide proper counsel for his slave, to appoint counsel to defend him, charging the fee for such service to the master. The regular right of a challenge of jurors for cause was given the slave, and in capital cases six peremtory challenges were also allowed him, as was also the usual right of appeal.

On a trial for a capital crime it was permissable for the jury to convict of a crime under that degree, if the evidence

justified such a verdict,—the punishment then being "by burning in the hand, or by stripes," according to the magnitude of the offense,—"burning in the hand" being prescribed for nearly all felonies not punishable with death.

The maiming or manslaughter of a white person, rape and arson were all capital offenses,—as was also the "consulting, advising or conspiring to make insurrection or rebellion;" while for any free persons to be guilty of the latter offense with a slave the death penalty was also provided. Whenever sentence of death was finally passed upon a slave, he was always to be allowed at least twenty days before its execution, except in case of insurrection or conspiracy.

At a much later date than that which we are considering an act was passed providing for the payment to the owner of a condemned slave, out of the state treasury, of an amount equal to one-half his assessed value, to be paid as soon as he was executed.

Wherever it was found necessary to examine a free negro or slave, as a witness in any trial, no oath whatever was administered. He was charged by the court to declare the truth in the following words: "You are brought here as a witness, and, by direction of the law, I am to tell you, before you give your evidence, that you must tell the truth, the whole truth and nothing but the truth; and if it be found hereafter that you tell a lie, and give false teatimony in this matter, you must, for so doing, have both your ears nailed to the pillory, and cut off, and receive thirty-nine lashes on your bare back, well laid on, at the common whipping post."

It did not conclude "So help you God."

The crime of perjury has always been regarded as peculiarly heinous, and we find it punishable here more severely than any other noncapital offense. The penalty was, as indicated in the charge, to "have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour," in addition to the thirty-nine lashes prescribed. How-

ever, notwithstanding the mandatory language of the statute and of the charge, this punishment would seem to have been discretionary, for the act concludes, "or such other punishment as the court shall think proper, not extending to life or limb." Be that as it may, it is safe to conclude that no such punishment was ever inflicted, and we can find nothing in any of the books tending to show that it was ever resorted to.

It was only permissable for an owner to emancipate a slave by and with the consent of the Legislature, and then only by proving that such slave had "performed some meretorious act for the benefit of the owner, or some distinguished service for the state."

The courts were always open to a negro held as a slave who claimed to be entitled to his freedom,—though no person being a member of any emancipation society could sit as a juror in the trial of such causes.

While one of the earliest slave laws of which we have any record was that prohibiting the importing of slaves for sale, it was also made unlawful for a free negro to come into the state to live; and in 1831 and act was passed requiring every free negro between the ages of sixteen and fifty to remove from the state forever. But this was not followed by a general exodus, for the act contained a clause which allowed the negro to obtain from the Probate Court permission to remain in the state, upon a showing made of "good character and honest deportment."—though it was always exacted that every free negro should be duly registered in the county of his residence.

In connection with these acts it would be interesting to review the earlier decisions of our Supreme Court,—as showing the spirit which actuated our judges when called upon to adjudicate in matters wherein the slave was involved, and the fairness and liberality displayed in the construction and application of the laws concerning him. But it is impossible in this brief paper to do more than glance at one or two. Among the very first decisions is one rendered in 1818, in

which the learned judge held, in passing on an appeal for freedom from a number of negroes, claiming to be unlawfully detained as slaves, that the slaves in the Northwest Territory became free men by virtue of the ordinance of 1787, to which we have referred, and, with true justice, declared that, as such, they could "assert their freedom in the courts of this state and be protected therein." In the same opinion he observed that "slavery is condemned by reason and the laws of nature, and can only exist through municipal regulations; therefore in a matter of doubt, as between depriving an owner of a vested right, arising from law, and depriving a human being of his liberty, a natural right, the court would lean 'in favorem vitae et libetatis,'" and the petitioners were declared to be free.

In another very old case we find it early judicially determined that, in this state, the unjustifiable killing of a slave was murder.

This opinion, delivered in 1821, in the first years of our statehood, so clearly enunciates the humane principles which then actuated our courts, and to this good day continue to move them, in all their dealings with the inferior race, that it is peculiarly worthy of a place in the records of a society devoted to preserving the earlier history of our state and its people, and we may be pardoned for quoting its language at length.

It was by Justice Clarke, in reviewing an appeal by a white man who had killed a slave in Adams county and been sentenced to hang therefor. He said, in part, "In some respects slaves may be considered as chattels, but in others they are regarded as men. The law views them as capable of committing crimes. This can only be upon the principle that they are men and rational beings. The Roman law has been much relied on by counsel for the defendant. That law was confined to the Roman Empire, giving the power of life and death over captives in war, as slaves, but it no more extended here than did the similar power given to parents over the lives of their children.....At a

very early period in Virginia the power of life over slaves was given by statue, but.. .....as soon as these statues were repealed it was at once considered by their courts that the killing of a slave might be murder.....In this state the Legislature have considered slaves as reasonable and accountable beings, and it would be a stigma upon the character of the state, and a reproach to the administration of justice if the life of a slave could be taken with impunity, —if he could be murdered in cold blood, without subjecting the offender to the highest penalty known to the criminal jurisprudence of the county. Has the slave no rights because he is deprived of his freedom? He is still a human being, and possesses all those rights of which he is not deprived by the positive provisions of the law,—but in vain shall we look for any law passed by the enlightened and philanthropic legislature of this state giving to the master power over the life of the slave. Such a statute would be worthy the age of Draco or Caligula, and would be condemned by the unanimous voice of the people of this state, where cruelty, even, to slaves, much less the taking away of life, meets with universal reprobation..... Because slaves can be bought and sold it does not follow that they can be deprived of life.....The right of the master exists not by force of the law of nature or of nations, but by virtue only of the positive law of the state,—and, although that gives to the master the right to command the services of the slave, requiring the master to feed and clothe the slave from infancy till death, yet it gives the master no right to take the life of the slave, and if the offense be not murder it is not a crime, and subjects the offender to no punishment.....A distinction once existed in England between the killing of a Dane and a Saxon, but even in Coke's time the killing of any rational being was murder.....At one period of the Roman history, a history written in the blood of vanquished nations, slaves were regarded as captives, whose lives had been spared in battle, and the savage conqueror might take away the life of the captive, and therefore he might take away the

life of the slave. But the civil law of Rome extirpated this barberous privilege, and rendered the killing of a slave a capital offense. When the Northern barbarians overran Southern Europe, they had no laws but those of conquerors and conquered, victors and captives, yet even by this savage people no distinction was recognzied between the killing in cold blood of a slave or a freeman. And shall this court, in the nineteenth century, establish a principle too sanguinary for the code even of the Goths and Vandals, and extend to the wnole community the right to murder slaves with impunity?

The motion to arrest the judgment must be overruled."

The defendant was sentenced to hang on July 27th, 1821.

I have endeavored as well as possible in the brief time allotted me, to refer to the most important features of our early slave laws. It has not been my purpose to attempt an exhausted research into such legislation,—the object sought being merely to show, as a matter of some historical interest, from an impartial mention of the early acts concerning slavery, that the position of the slave in Mississippi was not as it has sometimes been depicted; that so far from being a creature with no legal status, subject to the whims and caprices of his master,—a mere chattel, over which even the power of life and death might be exercised at will,—he was surrounded by all the protection which just laws, humanely administered, could afford,—that the courts were ever open to him, and that he could, and did, appeal to them, and not in vain.

If any unknown or forgotten facts of historical importance to us have been brought to light, my purpose has been accomplished.

We have only touched upon the legislative enactments concerning slavery,—and for us, who know that it existed, it is unnecessary to revert to that higher law which controlled the relations between master and slave, and compelled such conduct toward the latter as made of him in countless instances the devoted friend.

Only an affection born of long years of treatment in the main considerate and kind, could have furnished history with the spectacle of the espousal by the slave of his master's cause, in a conflict the end of which meant so much of difference to the two.

The four years of faithful devotion to which the women of the South bear willing witness could never have been exhibited by an enslaved people between whom and their masters the relations had been other than those we know to have existed.

The society which made possible those relations was unique in tne history of civilization,—and in the annals of all the peoples who have passed through bondage the conduct of the negro slave stands without a parallel.